

# **EXHIBIT M**

Prof. Dr. Dr. h.c.mult. Anton Mayr  
Inst. For Medical Microbiology and Infectious  
Diseases  
Veterinary Faculty University Munich  
Veterinaerstrasse 13  
Munich 80539  
Germany

Michael Mowatt Ph.D  
Dir. Office of Technology Development  
NIH, NIAID  
Building 31 Room 3B62  
31 Center Drive MSC 2137  
Bethesda MD 20892-2137  
USA

Beforehand by fax. (301) 402 7123

6<sup>th</sup> November 2002

**Re: MVA and uses thereof**

Dear Dr Mowatt,

I am writing to enquire about recent events that have come to my attention regarding the commercialization by the NIH of MVA as a safe smallpox vaccine. Under the recent RFP (NIH-NIAID-DMID-03-44) it states that the NIH is willing to provide successful applicants a MSV of MVA for the development of a smallpox vaccine and I also understand that the NIH is funding a Phase I clinical program. In this RFP it requests evidence that the 'offeror has secured access to all intellectual property, know-how and tangible materials for the proposed work'.

I would like clarification why the NIAID believes it has access to all rights for the MVA that I supplied Dr Moss. Initially I provided Dr Moss with MVA from the time Dr Sutter (Postdoctoral Fellow working for me) visited his laboratory during 1990-93, although this academic research was funded by a German grant I was awarded in 1990. Upon further requests from Dr Moss for other sources of MVA for 'expression vector work' I provided MVA 575 and MVA II/85 in 1995 and MVA-572 during 2001. Again this was requested for research purposes and supplied in the knowledge that several MVA strains including MVA 572 were already deposited in European tissue culture collection which prohibits the commercialization of the deposited strain, or their derivatives, without the written permission from the organization, or individual that deposited the virus.

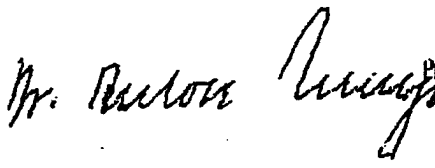
The fact that I have also received several requests from Therion to allow permission for Dr Moss to hand over MVA, also suggests that Dr Moss fully understood that all MVA strains supplied to him were for academic research purposes only. With these facts I was

of the understanding that the MVA strains which I supplied to Dr Moss were for research purposes only and would not be handed out for commercialization.

I have been working with Bavarian Nordic since 1997 as a full consultant and have provided them the exclusive rights for MVA. On my behalf Mr Wulff (President & CEO) wrote to Therion to clarify my position and deny access to the MVA strains requested (MVA-572) from Dr Moss. Your response dated 15<sup>th</sup> July clearly lacks the historical facts, ignores my long-term relationship with Bavarian Nordic and the fact these strains have been deposited in European tissue culture collections for many years. I therefore request a clarification from the NIAID why you believe there are 'no limitations on its ability to use and distribute the material, progeny or derivatives of the material'.

I agree with your statement that MVA represents an excellent candidate for the development of vaccines against HIV and smallpox infections. However, evidence from Bavarian Nordic suggests that MVA-BN has superior safety features and therefore I even have scientific reservations of the development of other MVA strains, especially for immune compromised individuals. The complete disregard by the NIH for the rights of a scientist who supplied material to a fellow scientific colleague for research purposes is something I am sure would damage the reputation of Dr Moss and the NIH. I am disappointed to think that I would not be recognized for my achievements should MVA be commercialized by the NIH, or by other companies that have received sources of MVA strictly meant for research purposes.

Yours sincerely

 Prof. Dr. Dr. h.c. mult. Anton Mayr  
Lehrstuhl für Mikrobiologie  
und Seuchenlehre  
Veterinärstraße 13  
80539 München

Prof. Dr. Dr.h.c.mult. Anton Mayr

cc: J. La Montague, Deputy Director, NIAID  
R. Lambert, Office of the General Counsel, NIH  
M. Rohrbach, Acting Director, Office of Technology Transfer, NIH

# **EXHIBIT N**

National Institutes of Health  
National Institute of Allergy and Infectious Diseases  
Building 31 Room 7A03  
31 Center Drive  
Bethesda, MD 20892-2520  
United States of America  
Attn.: John R. La Montagne

March 27, 2003

Dear John R. La Montagne,

**MVA – Intellectual Property**

To follow up on our meeting on January 8, 2003 we write to thank you for acknowledging the fact that your sample of MVA 572 was received from Anton Mayr for research purposes.

This confirms the intent of the inventor and our consultant, A. Mayr and that of the original recipient, B. Moss as memorialized by the correspondence by the company, Therion Biologics of February 26, 2002. In this letter, Therion Biologics asks A. Mayr's permission for B. Moss to provide a sample of MVA 572 which we subsequently rejected.

We understand that you have released this sample to Acambis without our permission but also without any warranty or assurances to Acambis as for the right to use or commercialize this sample. We enclose our latest correspondence with Acambis in this regard and accordingly await their comments as to how they would fulfill the requirements in order to secure access to all necessary intellectual property and know-how under the RFP.

Yours sincerely,



Bayarian Nordic A/S  
Peter Wulff  
President & CEO

cc.

Michael R. Mowatt  
B. Moss  
R. Lambert  
M Rohrbaugh  
Helge Lund, Royal Danish Embassy Washington

**BAVARIAN NORDIC**

Bayarian Nordic A/S

Ved Amagerbanen 23, DK-2300 Copenhagen S, Denmark. Phone +45 33 26 83 83. Fax +45 33 26 83 80